

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EDWARD "TY" GRAHAM,

**Plaintiff,**

V.

CINGULAR WIRELESS LLC,

**Defendant.**

NO. C05-1810JLR

## ORDER

This matter comes before the court on Plaintiff Edward “Ty” Graham’s Objection to and Motion to Strike Declaration of Lonnie Rosenwald (Dkt. # 74). For the reasons stated below, the court DENIES Plaintiff’s motion.

Local Rule CR 7(g) provides that a request to strike material attached to a submission of the opposing party shall not be presented in a separate motion, but shall be included in the responsive brief. Local Rules W.D. Wash. CR 7(g). If, as in this case, the document the movant requests stricken is attached to the reply brief, then the movant may file a surreply. *Id.* The sole purpose of the surreply is to address the request to strike. *Id.* Prior to filing the surreply, however, the movant must notify all parties (by telephone or facsimile) and the assigned judge's chambers (by telephone) as soon after receiving the reply brief as practicable that a surreply will be filed. *Id.* Plaintiff failed to inform this court or opposing counsel of his intent to file a surreply and erroneously captioned his surreply as a motion to strike

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1 contrary to Rule 7(g). Accordingly, Plaintiff's motion is not properly before this court. For  
2 this reason, the court will deny the motion.

3 The court notes, however, that Defendant did obtain leave from this court to file the  
4 Rosenwald declaration late. Defendant's reply materials were due on October 30, 2006.  
5 While Defendant filed the Lonnie Rosenwald declaration two days after October 30th,  
6 Defendant also properly moved for an order to enlarge time pursuant to Rule 6(b) of the  
7 Federal Rules of Civil Procedure. The court granted Defendant's motion (Dkt. # 78), giving  
8 Defendant until November 1, 2006 to file the Rosenwald declaration. Accordingly, the  
9 Rosenwald declaration will not be stricken as untimely.<sup>1</sup>

10 For the reasons stated above, the court DENIES Plaintiff's motion to strike (Dkt. # 74).

11 Dated this 2nd day of January, 2007.

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15 JAMES L. ROBART  
16 United States District Judge  
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25 <sup>1</sup> If Plaintiff wants to challenge why Defendant did not produce the Rosenwald declaration  
26 during discovery, the appropriate process is to file a motion for sanctions pursuant to Rule 37 of the  
Federal Rules of Civil Procedure.